

1 to file today and then to the extent that
2 there are issues that are keyed up by the
3 request for clarification, they can be replied
4 to, but not any matters that are keyed up by
5 the request for certification.

6 JUDGE STEINBERG: I didn't
7 understand that.

8 MR. BLAKE: Well, that's what I
9 was trying to --

10 JUDGE STEINBERG: Let's just leave
11 it the way it is. In the other pleadings,
12 other requests, there is clearly stated that
13 essentially the language and the issues is
14 incorrect, I'm paraphrasing, that the language
15 tracks was 1.1301, whatever the subsection is
16 -- I read these quickly. I didn't study them.

17 Unless I'm -- is that sort of
18 right?

19 MR. SOLOMON: I do think, Your
20 Honor, although they're titled differently,
21 but effectively they're saying the same thing
22 and since you have several parties that

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1 actually look at whether you have authority on
2 the schedule and you have authority of what
3 you should exercise --

4 JUDGE STEINBERG: Yes, but that
5 can be done under the -- I believe the replies
6 are due on that today, today, and then there's
7 no response. Next time ask for modification
8 of the issue or something more clearly.

9 So we'll leave that one alone with
10 no reply.

11 MR. TOSCANO: Your Honor, I'd also
12 like to clarify as to Mr. Blake's October 22nd
13 letter that you're not treating that as a
14 motion and that we don't need to reply to
15 that?

16 JUDGE STEINBERG: No, that was a
17 letter to Judge Sippel which he came in and
18 handed to me and I read it and I presume
19 that's
20 -- we're going to talk about some of that
21 stuff this morning. It was just sort of a
22 suggestion as to some of the things we could

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1 talk about today which I might adopt or might
2 not.

3 MR. TOSCANO: Thank you.

4 JUDGE STEINBERG: So but it's not
5 a formal pleading that needs a response.
6 Whatever we need to talk about, we can talk
7 about this morning.

8 Let me request something from the
9 Enforcement Bureau. If you could -- I would
10 appreciate it if you could comment on the
11 portion -- comment on anything you want to
12 comment on. I'm not restricting you in any
13 way, shape, or form. But if you would comment
14 on those portions of the motions for
15 modification that concern the framing, the
16 language of the issues, what your belief is
17 with respect to whether the language should be
18 changed as suggested in the motions or whether
19 the language is sufficient as it is.

20 If you could do that, I'd
21 appreciate it.

22 MR. SCHONMAN: In writing or not?

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1 JUDGE STEINBERG: In writing.

2 MR. SOLOMON: Thank you.

3 JUDGE STEINBERG: I prefer to get
4 things in writing, so I can look at them and
5 think about them.

6 Okay, any other pleadings that I
7 have that I'm supposed to have that I don't
8 know about?

9 Mr. Blake, anything you know of?

10 MR. BLAKE: No, sir.

11 JUDGE STEINBERG: Ms. Wallman?

12 MS. WALLMAN: Nothing else, Your
13 Honor.

14 JUDGE STEINBERG: Mr. Dunbar?

15 MR. DUNBAR: No, Your Honor.

16 JUDGE STEINBERG: Mr. Mills, Mr.
17 Redding?

18 MR. MILLS: The only question is
19 when the Enforcement Bureau might provide
20 those comments?

21 JUDGE STEINBERG: The 30th.

22 MR. MILLS: The 30th, great. Then

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1 nothing further.

2 JUDGE STEINBERG: Okay. Mr.
3 Cohen, Mr. Harding?

4 MR. HARDING: No, Your Honor.

5 JUDGE STEINBERG: Mr. Beckner?

6 MR. BECKNER: No, sir.

7 JUDGE STEINBERG: And Mr. Solomon?

8 MR. SOLOMON: No, Your Honor.

9 JUDGE STEINBERG: Did I leave
10 anybody out?

11 Mr. Schonman?

12 MR. SCHONMAN: You did not, but
13 you answered my question about when our motion
14 would be due. Thank you.

15 JUDGE STEINBERG: I have a few
16 things with respect to housekeeping.

17 When you file something, could you
18 please email me or fax me a copy of whatever
19 you file. And I don't mind waiting a day or
20 so to get a copy that shows the Secretary's
21 stamp or the electronic receipt.

22 We've been having a heck of a

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1 problem with getting mail and sometimes the
2 only way I know whether anything has been
3 filed is if I get from you. So if -- yes,
4 sir?

5 MR. HARDING: Your Honor, your
6 order requests everything faxed.

7 JUDGE STEINBERG: That's Judge
8 Sippel's order. Any way which is convenient
9 for you. A .pdf copy, just take a picture of
10 the front page and the rest of it, that's
11 fine. Judge Sippel throws that into every
12 designation order, not every -- every
13 assignment order and -- but email is fine. I
14 can always just click print and -- you know,
15 at the expense of several trees, but okay.

16 When you serve something on your
17 opponent, I would prefer that you serve -- I
18 can't direct it that you do it this way, but
19 I would prefer that you send it by email to
20 them also and if you want to mail a hard copy,
21 that's fine. But email is the same thing as
22 hand service and it would substantially

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1 expedite things, plus it saves somebody the
2 trouble of figuring out the due date when you
3 don't have to look at 1.4 for all the rules on
4 mailing. That was a joke too.

5 MR. BLAKE: But true.

6 JUDGE STEINBERG: I'm going to
7 have to work on this group.

8 (Laughter.)

9 MR. SOLOMON: I had to write those
10 rules. So when you said it was a joke --

11 JUDGE STEINBERG: Okay, the other
12 question I have for you is we've got six, in
13 essence, separate cases consolidated for
14 hearing. I don't see that it makes any sense
15 for -- let's say somebody files a motion to do
16 something to serve everybody in the world with
17 that motion. I think we can get away with
18 just serving your opponent in that particular
19 case.

20 Does anybody have any thoughts on
21 that?

22 Certainly, if you want to serve

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1 everybody in the world I can't -- that's fine
2 with me, but I don't think it makes any sense
3 to do so, because if you serve somebody that's
4 in another case, they don't have the right to
5 respond anyway. So what difference would it
6 make, unless everybody just wants to be kept
7 apprised of what's going on in every other
8 case, but I would suspect you've got enough to
9 do without doing that.

10 MR. SCHONMAN: Your Honor, if I
11 might speak.

12 JUDGE STEINBERG: sure.

13 MR. SCHONMAN: The Bureau would
14 want to be served with every pleading filed in
15 all the cases.

16 JUDGE STEINBERG: With the
17 exception of, I'm sure, the Bureau.

18 I thought that was kind of
19 understood though, since you're a party to all
20 cases.

21 Anybody want to comment? Does
22 anybody have any objection to doing it that

1 way?

2 Okay, hearing no objection, then
3 just serve your counterpart in that particular
4 proceeding and the Bureau.

5 But if you want to serve
6 everybody, that's fine too. It's up to you.

7 Yes?

8 MS. WALLMAN: Perhaps related to
9 that service issue, I'm just thinking on
10 Thursday we have three responses due to
11 functionally identical requests and so forth.
12 Would there be any objection to my properly
13 captioning that, but putting it --

14 JUDGE STEINBERG: It's a
15 consolidated response?

16 MS. WALLMAN: Right.

17 JUDGE STEINBERG: No, just serve
18 it on the four parties?

19 MS. WALLMAN: Three.

20 JUDGE STEINBERG: Just joint
21 response to A, B, and C, and put the right
22 caption on it with the three cases, and just

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1 serve the people in those cases and the
2 Bureau.

3 Do you want three copies of that,
4 Mr. Schonman or just one?

5 That's a joke, too.

6 (Laughter.)

7 MR. SCHONMAN: You had me going.

8 JUDGE STEINBERG: Okay, I knew I
9 did.

10 MS. WALLMAN: Thank you, Judge.

11 JUDGE STEINBERG: Okay, that
12 concludes what I'm prepared to do today. Does
13 anybody have anything that they want to bring
14 up? If not -- I'm sure there are going to be
15 things.

16 MR. SOLOMON: Your Honor, I do
17 just have a couple of questions to understand
18 your orders, make sure we understand it
19 correctly.

20 Are you contemplating oral direct,
21 rather than written direct?

22 JUDGE STEINBERG: I don't have any

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1 -- if you prepare your direct cases, you can
2 prepare it any which way you want. I think it
3 would be a gigantic -- I mean, we have
4 essentially 6 cases, 12 parties. I'm
5 allowing, according to my schedule it will be
6 eight, eight-hour days for the hearing, from
7 8 to 12 and approximately 1 to 5.

8 That leaves everybody with five
9 hours to present each case which you know, is
10 in my opinion, ludicrous. That's what we're
11 dealing with at the current moment.

12 I should tell you on the motions
13 for certification and modification, I'm going
14 to wait to get the responses and I'm going to
15 write something. It might be a single
16 pleading, a single order. It might be
17 separate orders. It might be a single order.
18 That's what I'm thinking now, as expeditiously
19 as possible.

20 But let me see, what were the dates I sent?

21 MR. BLAKE: November 10th.

22 JUDGE STEINBERG: For direct?

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1 MR. BLAKE: Yes.

2 JUDGE STEINBERG: Yes. Well, try
3 to get something out before then. I mean, if
4 the last response, what, we consolidated into
5 the 30th?

6 MS. WALLMAN: The opposition --

7 JUDGE STEINBERG: Yes, and so none
8 of them are due after the 30th? Pardon me?

9 Okay, then this reply is to the
10 30th. The first is Saturday, right? So the
11 replies would be due close to November 10th.
12 So I don't, well, I don't want to be unfair to
13 you guys, and I'm prepared to, I don't
14 basically, I don't want you spinning your
15 wheels for no purpose and spending your
16 client's money for no purpose.

17 So I think what I might do, what I
18 think, not what I might do, what I'm going to
19 do is suspend the procedural dates until after
20 my order comes out, ruling on them requests
21 for certification and then have another pre-
22 hearing conference at that time and see where

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1 we stand and what could be worked out.

2 Given those circumstances, I have
3 to be candid, it is not possible to do this
4 within the 60 days. So we might want to shoot
5 for a certain period of time after that ruling
6 is made. That ruling is going to be basic to
7 the case and it will affect all aspects, all
8 remaining aspects of the case. And I think
9 it's more important to do things correctly
10 than to do things quickly.

11 Yes.

12 MR. BLAKE: Your Honor, do you
13 think it will be useful to have argument after
14 the replies come in?

15 JUDGE STEINBERG: Oral argument?
16 I hate oral argument. I've done a number of
17 them, you know, not myself where I presented.
18 It's just a total waste of time. Judges are
19 up there. They know what they're going to
20 rule. Their sole purpose in life is to
21 embarrass the hell out of you and make you
22 look like a fool and make them look

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1 tremendously smart, and if that is what you
2 want to do, I'm willing to look tremendously
3 smart, but --

4 (Laughter.)

5 But I don't think I want to do
6 that.

7 MR. BLAKE: Your Honor, could we
8 talk a little bit more about suspending the
9 hearing dates?

10 The NFL network has a huge
11 interest in trying to get this resolved, which
12 will have to be by negotiation, but the course
13 of this hearing will help that so that the
14 games that are coming up, beginning on
15 November 6th --

16 JUDGE STEINBERG: There is no way
17 anything is going to be --

18 MR. BLAKE: I understand that.

19 JUDGE STEINBERG: -- done by
20 November 6th.

21 MR. BLAKE: But if we can keep
22 moving forward, then the interest in having

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1 this programming available to the public can
2 be served and certainly our client is willing
3 to go forward and take the risk of time and
4 money involved because of the need to move
5 forward as quickly as possible with getting
6 the proceeding moving forward as a framework
7 for trying to resolve the disputes.

8 JUDGE STEINBERG: I thoroughly
9 understand your position. Even assuming that
10 my recommended decision came out in 60 days,
11 that's December something. Then the
12 Commission has got to take a look at it and
13 depending on the results of the election,
14 frankly, the Commissioners might be interested
15 in something else, namely their next jobs and
16 things like that.

17 (Laughter.)

18 And they're not going to get to
19 this thing in a week or two.

20 MR. BLAKE: I understand, but just
21 the course of the hearing would be helpful in
22 terms of trying to resolve the disputes so

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1 that the games can be carried. It's clear
2 from the pleadings that have been filed thus
3 far that the cable industry would like to
4 delay this, and the programmers would like to
5 move it forward. And our concern is that
6 suspending the hearing date comes down on one
7 side of that concern, that debate.

8 JUDGE STEINBERG: So everybody
9 spends a ton of money preparing exhibits that
10 will never, ever be used at that time.

11 MS. WALLMAN: Your Honor, Wealth
12 TV. We appreciate that risk. The delay is a
13 big problem for a small business. In the
14 spirit of trying to keep things moving, we
15 would be willing to file our opposition to the
16 request today, rather than Thursday. That
17 would save a few days on the --

18 JUDGE STEINBERG: You're free to
19 file it at any time you want. But if
20 everybody does, you might be the only one
21 filing today and somebody might file Thursday,
22 I still will have to wait.

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1 But as soon as it is ready to be
2 ruled on, it will be ruled on. I'm not going
3 to sit on it for months.

4 MR. BLAKE: Well, we completely
5 understand your willingness to try to keep it
6 moving, but our concern is that this really
7 does come down on one side of a very important
8 issue. The record is replete with instances
9 where this is tried to be spun out by the
10 cable industry, to thwart independent
11 programmers, and this would be another success
12 in their being able to do so.

13 JUDGE STEINBERG: I really don't
14 see that I have any other choice to be fair to
15 everybody in the room. I can't be fair to you
16 and unfair to them, or fair to them and unfair
17 to you. I have to be unfair to everybody.

18 MR. BLAKE: It is a perfectly
19 level playing field for both sides of this
20 issue to have to go forward with the hearing
21 while these issues are being deliberated on.
22 That's even-handed.

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1 MR. FREDERICK: Your Honor, this
2 is David Frederick for TCR. The NFL and TCR
3 MASN are going to file if Wealth TV files
4 today. All of the oppositions to the motions
5 for certification are going to be filed today,
6 and that will speed up the process by several
7 days.

8 JUDGE STEINBERG: That's fine,
9 because the reply date runs from the date that
10 the opposition -- that's great. So I can get
11 to it sooner and then we'll see where we stand
12 after I rule.

13 MR. BLAKE: Would it be possible
14 to hold off on the decision about what to do
15 the procedural dates until you've had a chance
16 to look at the pleadings? In other words,
17 keep the dates that you ordered here and then
18 move forward on that basis?

19 MR. TOSCANO: Your Honor, this is
20 not, this is supposed to be a fair, fact-
21 finding proceeding, not a proceeding by which
22 the NFL can get some leverage in negotiation.

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1 It's Comcast that elected ADR. The NFL chose
2 not to elect ADR. I don't think in making a
3 decision you should take into account how this
4 is going to affect the NFL's negotiating
5 leverage.

6 JUDGE STEINBERG: Well, NFL did
7 not reject ADR, they just rejected the
8 suspension, the 60-day limit. So, yes, the
9 60-day thing. They said that they didn't like
10 that condition, although the condition was in
11 the HDO, not something he made up.

12 I'm going to stick with my ruling
13 and I'm just going to suspend the dates. I
14 will issue an order to that effect. I will
15 rule as expeditiously as possible and then we
16 will have another conference and see where we
17 go.

18 Anything else? Yes, sir.

19 MR. HARDING: Your Honor, as I
20 read 1.45, replies are due five days from the
21 date --

22 JUDGE STEINBERG: Oh, 1.45 doesn't

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1 apply. It's 1.294. We're in hearing.

2 MR. HARDING: Thank you, sir.

3 JUDGE STEINBERG: Yes, 1.45 is
4 just a general pleading rule on 1.294 at the
5 one specific to hearings.

6 MR. SOLOMON: Can I ask you
7 question, Your Honor?

8 JUDGE STEINBERG: Sure.

9 MR. SOLOMON: If it's 1.294 and
10 it's four days, wasn't it due on Friday, the
11 opposition to our motions, that is today is
12 four days from Monday?

13 JUDGE STEINBERG: Okay, start
14 again.

15 MR. SOLOMON: We filed on Monday
16 and served on Monday. If it is four days from
17 Monday, then that's Tuesday, Wednesday,
18 Thursday, Friday, then the time for filing
19 oppositions to our motion has expired.

20 JUDGE STEINBERG: What dates
21 expired?

22 MR. SOLOMON: Friday was the 24th.

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1 We filed on the 20th, so the 21st --

2 JUDGE STEINBERG: Well,
3 technically you filed on the 21st.

4 MR. SOLOMON: But we have a
5 receipt from the 20th.

6 JUDGE STEINBERG: The receipt says
7 Bureau Office.

8 MR. SOLOMON: No, we have a
9 receipt from the Secretary's Office from the
10 20th.

11 JUDGE STEINBERG: So Office of the
12 Secretary?

13 MR. SOLOMON: We filed it with the
14 Secretary.

15 JUDGE STEINBERG: Okay, send it to
16 me.

17 MR. SOLOMON: Okay.

18 JUDGE STEINBERG: If that's true,
19 then I will extend the deadline until today.

20 MR. BLAKE: As I understand it was
21 filed with the Secretary on Tuesday, so we
22 push forward four days?

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1 MR. SOLOMON: No, I believe it was
2 filed on Monday. I will double-check, and if
3 it was filed on Monday correctly, I will --

4 JUDGE STEINBERG: Given the
5 confusion, I mean, you all intend to file
6 today? Given the confusion, I will extend the
7 time for today. It's important --

8 MR. SOLOMON: So we still don't
9 get a reply?

10 JUDGE STEINBERG: No. I'm not
11 saying you can't cooperate with somebody else
12 in the fashion of replying. That's your
13 business.

14 MR. LEVY: Your Honor, can I ask a
15 question in anticipation of the hearing?

16 JUDGE STEINBERG: Sure.

17 MR. LEVY: It's Gregg Levy for the
18 NFL Network. Can we assume that the
19 declarations and affidavits and exhibits that
20 have already been filed as part of the
21 complaint process will be before Your Honor
22 and part of the record for purposes of the

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1 hearing?

2 JUDGE STEINBERG: No. It's a de
3 novo hearing, and you have to, well, it's a de
4 novo hearing. Let me leave it at that. And
5 if you want the declaration of X to come in,
6 X has to be available for cross examination if
7 they want them.

8 MR. LEVY: That was my assumption.
9 But may we submit such a declaration and
10 present the witness for cross examination?

11 JUDGE STEINBERG: Sure. Of
12 course. Yes, just basically the hearing
13 record is a box and when we start the hearing
14 the box is empty. And we all proceed to fill
15 up the box and then we close the record and
16 whatever is in the box is what I base my
17 decision on. And nothing is in the box right
18 now. Not the complaints. The HDO in the box
19 is only for the purpose of showing that there
20 was an HDO issued. And that this was the --

21 MR. TOLLIN: Just for
22 clarification. Are you talking about the

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1 complaint itself or the exhibits, the
2 declarations --

3 JUDGE STEINBERG: The complaints -
4 - if somebody wants to introduce the
5 complaints and take official notice of the
6 complaints.

7 MR. TOLLIN: Okay.

8 JUDGE STEINBERG: Something that's
9 of that nature, I can take official notice of,
10 but it's still got to be presented.

11 MR. LEVY: My concern was that in
12 light of the limited time period for the
13 hearing, if we could expedite the process by
14 submitting either through the declarations
15 that are already, have already been filed with
16 the Commission or through some similar written
17 affirmative testimony to satisfy our burden of
18 proof.

19 JUDGE STEINBERG: That's fine.

20 MR. LEVY: Understood.

21 JUDGE STEINBERG: And that's
22 anyway you want to do it. I can't direct you

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1 as to how to present your case. Although it
2 would be extremely helpful to have it all in
3 writing.

4 MR. LEVY: Understood.

5 JUDGE STEINBERG: Okay.

6 MR. BLAKE: Your Honor, with
7 respect to that point you just made and the
8 concern you expressed earlier about the time
9 allotted, would it be appropriate to require
10 that the affirmative cases be put in writing?

11 JUDGE STEINBERG: I could do that
12 if this was a comparative broadcast hearing,
13 but I can't do if it's any other kind of
14 hearing.

15 MR. BECKNER: Your Honor, if I
16 might?

17 JUDGE STEINBERG: Sure.

18 MR. BECKNER: I think there's a
19 problem with the process you're talking about,
20 because if a party is going to present 30
21 pages of prefiled direct and on day one of the
22 hearing hand the witness 30 pages of prefiled

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1 direct, and then say to opposing counsel, your
2 witness to cross examination, that counsel
3 hasn't seen that document.

4 JUDGE STEINBERG: Sure, you have.
5 That will be exchanged in the exhibit
6 exchange.

7 MR. BECKNER: Okay.

8 MR. TOLLIN: Actually, the problem
9 is if the party doesn't put in written direct,
10 you're not going to have any idea of what the
11 oral testimony is going to be all about.

12 JUDGE STEINBERG: Well, let me put
13 it this way. If the situation like that
14 occurs, in the past what I have done was I
15 recessed the hearing and allowed counsel
16 that's doing the cross examination sufficient
17 period of time to develop the cross
18 examination -- that's only fair. That's why
19 we need depositions.

20 MR. BLAKE: Your Honor, what if we
21 tried to agree right now, among all the
22 parties, that they'll put their direct in

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